

BILLING CODE: 3710-EN

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Programmatic Environmental Impact Statement for a proposed Introduction of the Oyster Species, *Crassostrea ariakensis*, into the Tidal Waters of Maryland and Virginia to Establish a Naturalized, Reproducing, and Self-sustaining Population of this Oyster Species.

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is the lead Federal agency. The Virginia Marine Resources Commission (VMRC) on behalf of the Commonwealth of Virginia and the Maryland Department of Natural Resources (MDNR) on behalf of the State of Maryland are the lead state agencies (States). The lead agencies, in cooperation with the U.S. Environmental Protection Agency (EPA), the National Oceanographic and Atmospheric Administration (NOAA), and the U.S. Fish and Wildlife Service (FWS), announce their intent to prepare a programmatic Environmental Impact Statement (EIS) to evaluate alternative approaches to

increasing oyster populations into the tidal waters of Maryland and Virginia (Chesapeake and coastal bays) to provide the following benefits. The benefits of a rehabilitated oyster resource include the potential for improved water quality, creation of aquatic habitat, and the re-establishment of an economically viable oyster industry preserving the region's culture associated with working waterman.

The proposed action to be evaluated in the EIS will be a proposal by the states to introduce the Asian oyster species, *Crassostrea ariakensis*, propagated from existing 3rd or later generation of the Oregon stock of this species, into the tidal waters of Maryland and Virginia to increase oyster populations. The States and the Corps will continue native oyster (*C. virginica*) restoration efforts throughout the Chesapeake Bay.

DATES: MEETINGS: The public scoping meeting scheduled at the MD DNR in the Tawes Building, Annapolis, Maryland 21401 on January 26, 2004 at 7:00pm and the public scoping meeting scheduled at the VMRC offices at 2600 Washington Avenue, Newport News, Virginia on January 28, 2004 at 6:00pm published in the **Federal Register** on Monday, January 5, 2004 (Vol. 69, No. 2 FR 330) have been moved. The public scoping meeting in Maryland will now be held at the Radisson Hotel Annapolis, 210 Holiday Court, Annapolis, Maryland 21401 on the same date and at the same time, January 26, 2004 at 7:00pm.

The public scoping meeting in Virginia will now be held at Warwick High School, 51 Copeland Lane, Newport News, VA on the same date and at the same time, January 28, 2004 at 6:00pm.

COMMENTS: Submit comments by February 20, 2004.

ADDRESSES: Written comments on the scope of the programmatic EIS or request for information should be sent to Mr. Peter Kube at the U.S Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, VA 23510 or sent via email at peter.r.kube@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Mr. Peter Kube at the Corps, (757) 441-7504, Mr. Thomas O'Connell, Fisheries Service, MDNR, 410-260-8261, or Mr. Jack Travelstead, VMRC, (757)247-2247.

SUPPLEMENTAL INFORMATION:

Proposed Action

The State of Maryland and Commonwealth of Virginia propose to introduce the oyster species, *Crassostrea ariakensis*, into the tidal waters of Maryland and Virginia, beginning in 2005 or as soon as a rigorous, scientifically based EIS can be undertaken and a Record of Decision prepared, for the purpose of establishing a naturalized,

reproducing, and self-sustaining population of this oyster species. Diploid *C. ariakensis* would be propagated from existing 3rd or later generation of the Oregon stock of this species, in accordance with the International Council for the Exploration of the Sea's (ICES) 1994 *Code of Practices on the Introductions and Transfers of Marine Organisms*. Deployment of diploid *C. ariakensis* from hatcheries is proposed to occur first on State designated sanctuaries separate from native oyster restoration projects, where harvesting would be prohibited permanently, and then on harvest reserve and special management areas where only selective harvesting would be allowed.

The States further propose to continue native oyster (*C. virginica*) restoration efforts with the Corps throughout the Chesapeake Bay by using the best available restoration strategies and stock assessment techniques, including the maintenance and expansion of the existing network of sanctuaries and harvest reserves, enhancing reproduction through broodstock enhancement, and supplementing natural recruitment of this species with hatchery produced spat.

The objective of this proposal and continuing restoration of native populations is to establish a self-sustaining oyster population that reaches a level of

abundance in Chesapeake Bay that would support sustainable harvests comparable to harvest levels during the period 1920-1970. The benefits of a rehabilitated oyster population may include: Improving water clarity by filtering phytoplankton, suspended solids and organic particles from the water, providing important reef habitat for oysters, finfish, crabs and a diversity of other species; enhancing essential fish habitat, rehabilitating an oyster population capable of supporting an economically viable oyster industry, and preserving the Chesapeake Bay's communities and culture associated with working watermen.

Purpose and Need

Oysters are a keystone species in the Bay ecosystem. Oyster management in Chesapeake Bay has failed to prevent native oyster populations from declining to less than one percent of their historic levels in the face of harvest pressures, habitat loss and the two parasites MSX and Dermo. A need exists to restore the ecological role of oysters in the Bay and the economic benefits of a commercial fishery through native oyster restoration and/or an ecologically compatible non-native oyster species that would restore these lost functions. Introduction of *C. ariakensis* would only be attempted if it is determined that the benefits of the introduction would outweigh negative

impacts, giving consideration to effects on the ecology of the Bay, potential for introduction of new diseases or parasites, restoration of native oysters, potential for *C. ariakensis* to become self-sustaining, and alternatives to the proposed action."

Preliminary Alternatives to the Proposed Action

It is anticipated that the following alternatives to the proposed action will be evaluated in the EIS:

Alternative 1 - No Action - Not taking the proposed action: Continue Maryland's present Oyster Restoration and Repletion Programs, and Virginia's Oyster Restoration Program under current program and resource management policies and available funding using the best available restoration strategies and stock assessment techniques.

Alternative 2 - Expand Native Oyster Restoration Program: Expand, improve, and accelerate Maryland's Oyster Restoration and Repletion Programs, and Virginia's Oyster Restoration Program in collaboration with Federal and private partners. This work would include, but not be limited to an assessment of cultch limitations and long-term solutions for this problem and the development, production, and deployment of large quantities of disease

resistant strain(s) of *C. virginica* (Eastern Oyster) for broodstock enhancement.

Alternative 3 - Harvest Moratorium: Implement a temporary harvest moratorium on native oysters and an oyster industry compensation (buy-out) program in Maryland and Virginia or a program under which displaced oystermen are offered on-water work in a restoration program.

Alternative 4 - Aquaculture: Establish and/or expand State-assisted, managed or regulated aquaculture operations in Maryland and Virginia using the native oyster species.

Alternative 5 - Aquaculture: Establish State-assisted, managed or regulated aquaculture operations in Maryland and Virginia using suitable triploid, non-native oyster species.

Alternative 6 - Introduce and Propagate an Alternative Oyster Species (Other than C. ariakensis) or an Alternative Strain of C. ariakensis: Introduce and propagate in the State-sponsored, managed or regulated oyster restoration programs in Maryland and Virginia, a disease resistant oyster species other than *C. ariakensis*, or an alternative strain of *C. ariakensis*, from waters outside the U.S. in accordance with the ICES 1994 Code of Practices on the Introductions and Transfers of Marine Organisms.

Alternative 7 - Combination of Alternatives

Programmatic EIS Process

Scoping Process

The programmatic EIS process begins with the publication of this notice of intent. This public notice establishes the beginning of the scoping period. The scoping period will continue for 3 weeks after the last public scoping meeting.

The lead and cooperating agencies will conduct an open scoping and public involvement process during the development of the programmatic EIS. The scoping process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters would be addressed during scoping. The purpose of the scoping meetings is to assist the Corps, MDNR, VMRC, NOAA, EPA, and FWS representatives in defining the issues that will be evaluated in the EIS.

The lead agencies invite Federal agencies, State and local governments, Native American Tribes and the public to comment on the scope of this programmatic EIS. The lead agencies will hold scoping meetings to receive public input on the alternatives to the proposed action and the range of issues to be addressed in the programmatic EIS. Written

scoping comments will be considered in the preparation of the draft programmatic EIS (**see DATES**). Comments postmarked or received by e-mail after specified date will be considered to the extent practicable.

Two public scoping meetings will be held at the locations indicated above (see **DATES**). Further information will be published in local newspapers in advance of the meetings. Any necessary changes will be announced in the local media.

Each public scoping meeting will begin with a briefing on the state of *C. virginica* in the Chesapeake Bay and its tributaries, the status of restoration efforts, preliminary programmatic EIS alternatives, and the proposed action of the programmatic EIS. Copies of the meeting handouts will be available to anyone unable to attend by contacting MDNR or VMRC as described above under **ADDRESSES**. Following the initial presentation, MDNR, VMRC, and Corps representatives will answer scope-related questions and accept comments.

EIS Preparation

Development of the draft programmatic EIS will begin after the close of the public scoping period. Technical and advisory support will be obtained from lead and cooperating agencies and organizations. Preparation of the programmatic

EIS will also be supported by concurrent research sponsored by the MDNR and NOAA and by others.

A scientific advisory panel will advise on the research that is essential for the EIS, appropriate analytical methods for use of existing data, quality assurance for data, analytical results to be used in the EIS, and comment on the general sufficiency of the scientific research used in the EIS.

Schedule

Subject to the availability of funds, the existing schedule anticipates an expedited process to produce a programmatic EIS leading to a record of decision. The draft programmatic EIS is expected to be available for public review in the spring of 2005 or as quickly as a rigorous, scientifically based EIS can be produced. Public meetings may be held following the notice of availability of the draft programmatic EIS. Following the Record of Decision (ROD) of the Programmatic EIS, site-specific deployment of non-native oysters may be subject to regulatory requirements of the Rivers and Harbors Act and the Clean Water Act, National Environmental p act NEPA.

Issues to be Addressed

The following issues have been identified for analysis in the programmatic EIS. The list is tentative and intended

to facilitate public comment on the scope of the programmatic EIS. The lead agencies specifically invite suggestions for the addition or deletion of items on this list:

- (1) Pathogen disease and virus risk analysis associated with introduction of a non-native oyster;
- (2) Life history and biology of *Crassostrea ariakensis*;
- (3) Socioeconomic effects towards commercial and recreational activities in the Chesapeake Bay;
- (4) Production of a comprehensive risk assessment and oyster growth, mortality and demographic model;
- (5) Development of a model to determine the specific locations and scenarios and the outcome of introductions in these specific locations;
- (6) Development of management practices for an introduction of a non-native species and study of the habitat requirements of the Asian oyster;
- (7) Other appropriate studies identified by the National Academy of Sciences in its report *Non-Native Oysters in the Chesapeake Bay* (NRC, 2003),
- (8) Development of a model for the expansion,

improvement and acceleration of oyster restoration programs in Maryland and Virginia, including locations, scenarios and outcomes of expansions in specific locations.

(9) Development of management practices for implementation of expanded, improved and accelerated oyster restoration programs in Maryland and Virginia, and;

(10) Any other issues identified as part of the public scoping process.

Other Environmental Review and Consultations

To the fullest extent possible, the programmatic EIS will be integrated with analysis and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93-205; 16 U.S.C. 1532 *et seq.*); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94-265; 16U.S.C. 1801, *et seq.*), the National Historic Preservation Act of 1966, as amended (Pub. L. 89-655; 16 U.S.C. 470. *et seq.*); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85-624; 16 U.S.C., *et seq.*); the Coastal Zone Management Act of 1972, as amended (Pub. L. 92-583; 16 U.S.C. 1451, *et seq.*); and the Clean Water Act of 1977, as amended (Pub. L. 92-500; 33 U.S.C. 1251, *et seq.*); Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 *et seq.*); Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended (16

U.S.C. 4701 et seq.); Lacey Act, as amended (18 U.S.C. 42),
The 1993 Chesapeake Bay Policy for the Introduction of Non-
Indigenous Aquatic Species and applicable and appropriate
Executive Orders.

YVONNE J. PRETTYMAN-BECK
Colonel, Corps of Engineers
Commanding